



Control Number: 48785



Item Number: 158

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**CONSOLIDATED SOAH DOCKET 473-19-1265
CONSOLIDATED PUC DOCKET NO. 48785**

JOINT APPLICATION OF ONCOR	§	BEFORE THE STATE OFFICE
ELECTRIC DELIVERY COMPANY	§	
LLC, AEP TEXAS INC., AND LCRA	§	
TRANSMISSION SERVICES	§	OF
CORPORATION TO AMEND THEIR	§	
CERTIFICATES OF CONVENIENCE	§	ADMINISTRATIVE HEARING
AND NECESSITY FOR 345-KV	§	
TRANSMISSION LINES IN PECOS,	§	
REEVES, AND WARD COUNTIES,	§	
TEXAS (SAND LAKE TO SOLSTICE	§	
AND BAKERSFIELD TO SOLSTICE)		

**REPLY BRIEF OF
PLAINS MARKETING, L.P. AND PLAINS PIPELINE, L.P.**

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TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Intervenors Plains Marketing, L.P. and Plains Pipeline, L.P. (“Plains Pipeline” or “Plains”) file this Reply Brief in response to the Initial Briefs filed by the parties to this proceeding. Plains continues to request that the Administrative Law Judges (“ALJs”) recommend approval of one of the supported routes utilizing links B2-B3—either Route 320 or 325 (as modified to the extent possible per the requests of oil and gas developers in this proceeding)—and respectfully shows as follows.

I. REPLY TO INITIAL BRIEFS

A. There is no significant difference between B2-B3 or B1-C3, or among the supported routes, as to prudent avoidance.

The Applicants and other intervenors all support adoption of routes that that utilize links B2-B3 (namely Routes 320 and 325, modified per the requests of the oil and gas developers in this proceeding). Plains agrees with the statements put forth in the initial briefs of the Applicants and Intervenors in support of these modified routes.

While the PUC Staff does not oppose Routes 320 or 325 modified, they continue to support selection of Route 41 (utilizing links B1-C3) over Route 320 principally based on the counting of habitable structures along those respective routes. Plains appreciates Staff's interest in developing a full record on routing issues to be considered by the ALJs and the Commission. However, the record evidence considered as a whole, including the mobility and temporary nature of the trailers for the "man camp" that were counted as structures, and including the severe impacts to continued development and expansion of facilities on the Plains property that is used for transportation of oil, the essential resource that is the focus of the community, favors selection of a route that utilizes links B2-B3—*i.e.* Routes 320 or 325 modified.

While Staff states that all routes comply with the Commission's prudent avoidance standard, adopting the position of their witness, Staff's briefing represents that Route 41 best meets the prudent avoidance standard based on the habitable structure count.¹ While number of habitable structures affected by a proposed route is a factor to be considered, it does not equate to prudent avoidance.² Staff's briefing does not reflect consideration of, and the Staff witness testified he did not consider, the nature of the features counted as habitable structures, despite the designations of such in the record evidence.³ No factors other than habitable structure count that pertain to prudent avoidance are addressed in Staff's briefing—such as that B2-B3 is over a mile

¹ Staff Initial Br. at 17.

² 16 TAC § 25.101(a)(4); Plains Pipeline Ex. 3 at 1 (*Application of Sharyland Utilities, L.P. to Amend a Certificate of Convenience and Necessity for the Stiles to Coates 138-kV Transmission Line in Reagan County*, Docket No. 46726, Memorandum from Chairman Walker at 1 (Sept. 27, 2017) (recommending striking Finding of Fact No. 104 from the proposal for decision, which had confused exposure with habitable structure count, and replacing it with finding that tracked prudent avoidance's definition); Docket No. 46726, Order at 13 (Sept. 9, 2017) (adopting Finding of Fact No. 104 as recommended in the Chairman's memorandum).

³ See Staff Initial Br. at 17; Tr at 118:18-119:10, 112:21-123:4, 123:12-19, 130:11-131:1 (Cross of Staff's witness David Bautista).

shorter than B1-C3, and the reduced length weighs in favor of the conclusion that B2-B3 reduces exposure and better complies with prudent avoidance.⁴

Even as to habitable structure count, as shown in **Table 1**, when the nature and character of the structures is considered there is not a significant difference between the two competing departures (B2-B3 vs. B1-C3). The counts in Staff's table include, with no distinction, the 32 temporary trailers that happened to be located across the road from link B2 on September 11, 2018, the date of Applicants' aerial survey.⁵ There is no evidence those trailers are there today.⁶ Instead, the evidence—including the Application and credible testimony of Ms. Perkins—shows those 32 counted trailers are part of a pop-up “man camp” to house oil and gas workers, and that the trailers are anticipated to abruptly move, which they have either done or will likely do soon.⁷ Thus, as Table 1 reflects, the count of these trailers today remains a question mark.

⁴ See 16 TAC § 25.101(a)(4); Oncor/AEPTX Ex. 1, Attach. 3 at 1, 3 (B2-B3 is 6,148 feet shorter than B1-C3).

⁵ See Staff's Initial Br. at 17; Tr. at 64:6-65:12 (Cross of Applicants' witness Brenda Perkins); Oncor/AEPTX Ex. 1 at 22-23; *see also* Direct Testimony of Brenda J. Perkins, Oncor/AEPTX Ex. 7 at 9; Rebuttal Testimony of Brenda J. Perkins, Oncor/AEPTX Ex. 13 at 4:9-23.

⁶ Tr. at 64:6-65:12, 66:15-20 (Perkins Cross).

⁷ *Id.* at 64:6-65:7 (Perkins Cross) (describing the term “man camp” and noting that trailers “have wheels on them, they have hitches, there's no utilities running to these units...So they are very temporary in nature”), 124:17-21 (Bautista Cross) (testifying that he understands a man camp to be “cluster . . . where people go and workers mainly go and stay . . . while they work out there”); Oncor/AEPTX Ex. 13 at 4:9-23 (Perkins Rebuttal) (“As discussed in my direct testimony, 32 of the habitable structures . . . are attributable to two clusters of newly-developed mobile living units (commonly referred to as ‘man camps’) along Link B2.”); Oncor/AEPTX Ex. 1 at 22-23.

Table 1: Habitable Structure Count

Alternative	Structure Count	Increased Cost
<u>Links B2-B3</u> Least cost, shortest <i>with trailers relocated:</i> <i>and with modification to link B2:</i>	? temporary trailers* 3 permanent structures 0 temporary trailers 3 permanent structures 0 temporary trailers 2 permanent structures * Unverified. Last counted 09/11/18 at 32 trailers.	
<u>Links B1-C3</u> Longest, most expensive	0 temporary trailers 0 permanent structures	\$1.598 million

Table 1 also reflects the record evidence that the trailers could be relocated on the same property and moved well beyond the 500 foot corridor used to count habitable structures.⁸

In addition, and also reflected in Table 1, through cooperative efforts of Plains and Oncor, link B2 could likely be modified to follow the pipeline easement depicted on the map to further increase the distance between the line and any habitable structures that remains at the man camp. **Figure 1** depicts an approximation such a link B2 modification.⁹ The modification would move the line so that it parallels the east side of the natural gas pipeline that is depicted on the underlying map from the Application.¹⁰ This would increase the distance, and move the line

⁸ Even if trailers remained on the property for a long period of time, the tract on which the trailers were located (tract no. 474) is large. Oncor/AEPTX Ex. 10A (showing the size of Tract No. 474); Tr. at 65:23-66:20 (Perkins Cross). There is ample room for the trailers to be relocated to a different area of the tract that is much farther away from proposed link B2 than 500 feet. See Oncor/AEPTX Ex. 10A; Tr. at 65:23-66:20 (Perkins Cross).

⁹ See Tr. at 82:13-21 (Perkins Cross). To the extent other property owners consent might be required for any such modification, Plains will work cooperatively with Oncor to accommodate whatever consent is needed. Any such changes would increase the distance between link B2 and whatever structures remain at the man camp when this line is built.

¹⁰ See Tr. at 57:11-58:11 (Cross of Applicant's witness Wilson P. Peppard) (confirming likely feasibility of minor modification).

more than 500 feet away, from the location of at least all but two of the permanent structures.¹¹

The standard ordering paragraph that directs applicants to work with directly affected landowners to implement minor deviations to minimize the impact of the proposed transmission line project captures the potential for such a modification.¹²

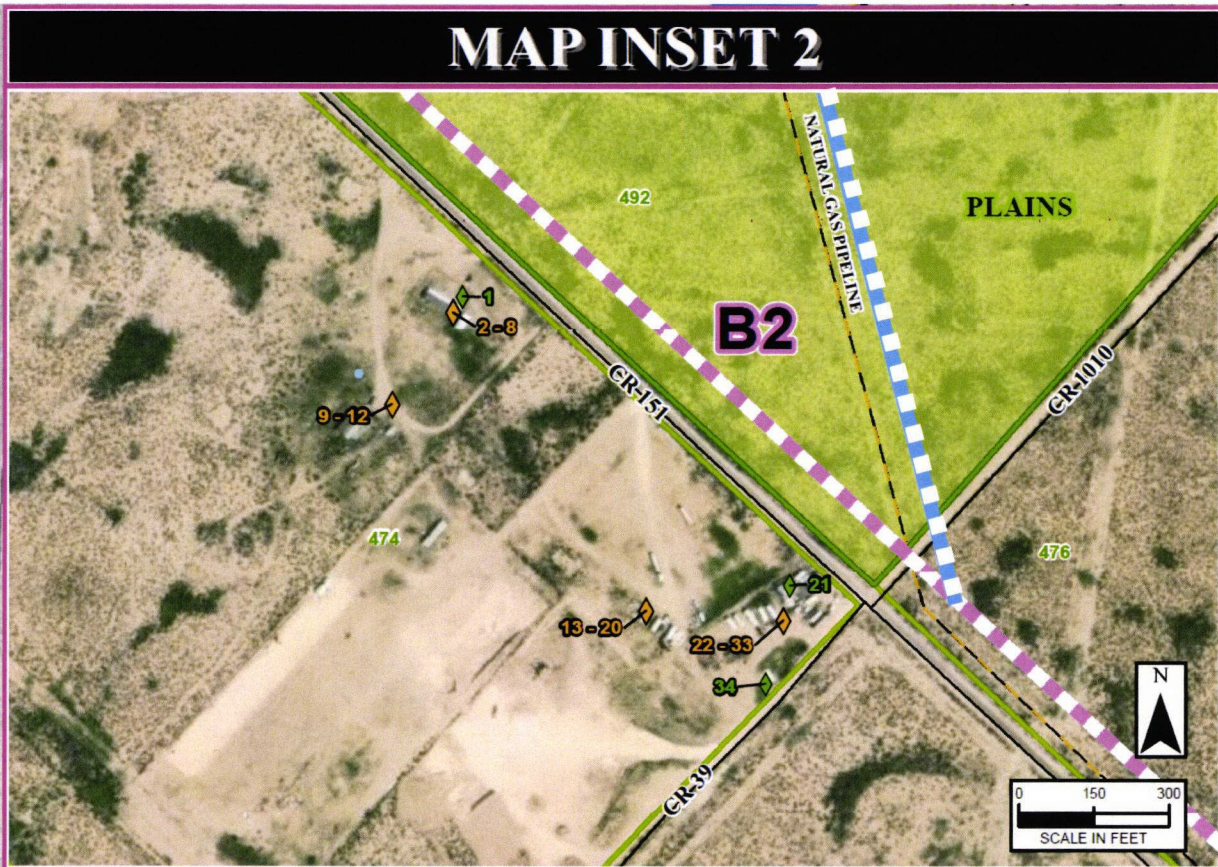


Figure 1: Selection from Intervenor Map, Oncor/AEP Ex. 10A—Habitable Structures

Pink-white dashed line = proposed transmission line, link B2. Blue-white dashed line = approximate location of link B2 modification (added). Orange numbered diamonds = habitable structure clusters, all of which are mobile living units (MLUs).¹³ Green numbered diamonds = habitable structures, nos. 1 and 21 are single-family residences, no. 34 is a MLU.¹⁴ Light green shading = Plains' property (intervenor). Orange-black dashed line = pipeline.

¹¹ See Tr. at 82:13-21 (Perkins Cross), 124:22-126:10 (Bautista Cross); Oncor/AEPTX Ex. 10A; Oncor/AEPTX Ex. 1 at 22-23. Structure 1, which was reported as 226 feet from link B2, as proposed, would be over 750 feet away with the minor modification. The distance would also increase for structure 21, from 206 feet to approximately 375 feet. See Oncor/AEPTX Ex. 10A; Oncor/AEPTX Ex. 1 at 22-23.

¹² See Applicants Initial Br. at 48 (Proposed Ordering Paragraph No. 12).

¹³ See Oncor/AEPTX Ex. 1 at 22-23.

¹⁴ See *id.*

While Staff's supported B1-C3 (Route 41) avoids the structures shown in the September 2018 aerial photograph of the man camp along link B2—it only does so at an increased cost of approximately \$1.6 million.¹⁵ As both Ms. Perkins and Mr. Marusak testified, the Commission's prudent avoidance policy "does not mean that a proposed transmission line must avoid habitable structures at all costs, but that reasonable alternatives should be considered."¹⁶

"Exposure" is the heart of a prudent avoidance assessment and is not to be confused with habitable structure count—a proxy of a proxy; there is more to consideration of habitable structures than a simple counting of structures.¹⁷ The Commission must, and does, look at the individual facts of the case, and other Commission precedent has indicated the specific nature of the structures at issue is important.¹⁸ When, as Ms. Perkins did, the individual characteristics of the "habitable structures" counted for link B2 are examined—instead of just "count"—and other

¹⁵ See Oncor/AEPTX Ex. 13 at 4:9-23 (Perkins Rebuttal) ("Route 320 directly affects 38 habitable structures, whereas Route 41 direct affects 3 habitable structures, but Route 41 is estimated to cost approximately \$1.6 million more than Route 320.").

¹⁶ Oncor/AEPTX Ex. 7 at 11:12-2 (Perkins Direct); Direct Testimony of Russel J. Marusak, Oncor/AEPTX Ex. 5 at 10:16-26 (similar statement); see 16 TAC § 25.101(a)(4).

¹⁷ 16 TAC § 25.101(a)(4); see Plains Pipeline Ex. 3 at 1 (Chairman Walker memorandum in Docket No. 46726). see also Tr. at 67:11-22 (Perkins Cross) (confirming that "complying with the policy of prudent avoidance is more than just a pure habitable structure count"); Oncor/AEPTX Ex. 7 at 11:12-2 (Perkins Direct) ("My understanding of the Commission's policy of prudent avoidance is that the process of routing a proposed transmission line should include consideration of routing options that will reasonably avoid population centers and other locations where people gather. This does not mean that a proposed transmission line must avoid habitable structures at all costs, but that reasonable alternatives should be considered."); Oncor/AEPTX Ex. 5 at 10:16-26 (Marusak Direct) (similar statement).

¹⁸ See, e.g., *Application of LCRA TSC to Amend its CCN for the Proposed McCamey D to Kendall to Gillespie 345-kV CREZ Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties*, Docket No. 38354. Final Order at FOF Nos. 30, 52, 124-126 (Jan. 24, 2011) (the Commission struck a balance between the community values of avoiding the Hill Country and avoiding habitable structures, and approved a transmission line route along I-10, even though that route was in the middle range of habitable structure count, and the Commission considered the character of the structures along that road, which included gas stations, convenience stores, fast-food restaurants, and car lots—all of which mainly see temporary visitors).

proxies such as length are considered, it is clear there is no meaningful difference between the B2-B3 departure and the B1-C3 departure as to the factor of prudent avoidance.¹⁹

B. B2-B3 best supports community values.

As Staff summarized, community values “include[s] landowner concerns and opposition.”²⁰ Formal public comments—like intervenor position statements and testimony—are expressions of community values.²¹ However, Staff’s community values discussion places an inappropriate emphasis on the single questionnaire from a resident on link C who requested moving the line further away from their home.²²

In this case, powerful and credible public comment identifies that this community values economic development from oil and gas, and values avoiding impacts to oil and gas related facilities, including pipelines. This expression of community values includes the intervention of Plains Pipeline and major oil and gas operators Oxy and Concho, and the credible testimonies of their witnesses concerning oil and gas development’s role as an economic driver in the area, and the need for avoidance of oil and gas related infrastructure.²³ Even the informal input received in response to the public meeting (where only nine attendees signed in) highlights avoidance of pipelines and other oil and gas related facilities as concerns.²⁴ Consideration of the entirety of the record evidence as a whole—and as briefed by Plains, Concho, and Oxy—shows that of the

¹⁹ See 16 TAC § 25.101(a)(4); *see also* Plains Initial Br. at 10-14, 27-29.

²⁰ Staff Initial Br. at 6-7 (quoting Docket No. 37448, Proposal for Decision at 14 (Mar. 18, 2010)).

²¹ *See id.*

²² *See id.* at 8; Oncor/AEPTX Ex. 1, Attach. 1, at 5-1 to 5-2.

²³ *See, e.g.,* Direct Testimony of Charles H. Midgey, Plains Pipeline Ex. 1 at 7-10; *see generally* Direct Testimony of Terry Burkes, Concho Ex. 1; Rebuttal Testimony of Brett Lowery, Concho Ex. 2; Direct Testimony of Albert Mendoza, Oxy Ex. 2; Rebuttal Testimony of Albert Mendoza, Oxy Ex. 3.

²⁴ Oncor/AEPTX Ex. 1, Attach. 1, at 5-1 to 5-2 (the only questionnaire received recommended better avoiding a pipeline and a saltwater disposal facility, and the local official who attended followed the meeting by providing pipeline location data).

two competing departures, B2-B3 (used in Route 320 and Route 325) minimizes impacts to oil and gas related facilities, including Plains' pipelines, and better meets the community's values.²⁵ Plains continues to support other modifications on Route 320 or Route 325 that may be proposed by Concho and Oxy, as those modifications also support the values expressed by the community of avoiding interference with oil and gas development.

C. The record evidence of B1-C3's negative impacts on Plains' real property, including surface facilities, property, and pipelines should be considered.

The Staff Initial Brief discussion of moderation of impact on the affected community and landowners narrowly focuses on one questionnaire response submitted by one public meeting attendee whose property is unaffected by the routes at issue, and then further focuses only on part of that questionnaire response.²⁶ Staff reasons that Route 41 (links B1-C3) better aligns with one of the respondent's concerns: "minimizing length across residential areas."²⁷ However, the record is clear that the single family residence referenced in that questionnaire is located on link C1.²⁸ Links B1-C3 (Route 41) and links B2-B3 (Route 320) have no effect on moderating the impact of the project to that questionnaire respondent.

The substantial record evidences specific negative impacts to Plains' property and pipelines created by B1-C3 and Route 41 and the requested moderation of those impacts is not addressed in Staff's briefing and was not considered by Staff's witness.²⁹ Plains' property is crossed and directly affected by both B1-C3 and B2-B3, and Plains intervened in this docket to

²⁵ See PURA § 37.056(c)(4)(A); 16 TAC § 25.101(b)(3)(B); Plains Initial Br. at 16-19; Concho Initial Br. at 14-15; Oxy Initial Br. at 5-8.

²⁶ See Staff Initial Br. at 14-15 (citing to part of the summary of the response at Oncor/AEP Ex. 1, Attach. 1 at 5-1).

²⁷ *Id.*

²⁸ Oncor/AEP Ex. 1, Attach. 1 at 5-1 to 5-2 (indicating the questionnaire respondent's property is located along link C1, which is not used in any of the supported routes at issue here).

²⁹ See Staff Initial Br. at 14-15; Tr at 118:18-119:10, 112:21-123:4, 123:12-19, 130:11-131:1 (Bautista Cross).

and provided direct evidence of the negative impacts on its property.³⁰ Unlike Plains, no other property owners who own the surface or who have other property interests along these links intervened.³¹

The record evidence shows that B1-C3 would fracture the east side of Plains' property into multiple transmission line encircled pockets, require multiple crossings of existing transmission lines that already burden the Plains property, and require multiple crossings of and parallel Plains' existing crude oil pipelines.³² Plains' pipelines converge at a central facility and trucking station located in the northeast corner of Plains' property.³³ Given the existing hub facility and pipeline design, the east side of Plains' property is the location where further development of transportation facilities supporting the oil and gas related development in the area will naturally occur. Thus, B1-C3 does not merely fracture Plains' property and interfere with Plains' existing facilities, but does so at a location that unduly restricts the ability of Plains to expand its facilities to serve this community.³⁴ In contrast, although B2-B3 still crosses Plains' property and locates more line on Plains' property, it moderates these negative impacts on Plains' property and pipelines.³⁵

Plains' facilities and pipelines are vital to oil and gas development; as Mr. Midgley testified, "[p]ipelines like those operated by Plains Pipeline are like veins, and are necessary to

³⁰ See Oncor/AEP Ex. 10A; Tr. at 53:16-25 (Marusak Cross) (testifying that when he designed link A, as well as competing links B1 and B2, he was not aware that Plains owned both tract nos. 490 and 492, and that none of those links, until they get to the roadways, follow property lines); Plains Initial Br. at 4-7.

³¹ See Oncor/AEP Ex. 10A (showing no other intervenors).

³² See *id.*; Tr. at 55:5-56:23 (Peppard Cross) (describing the pockets); *see also* Plains Initial Br. at 6-10.

³³ See Oncor/AEP Ex. 10A.

³⁴ See *id.*; *see also* Oncor/AEP Ex. 1, Attach. 1 (App. G) at Fig. 3-1 A (environmental constraints map that more clearly shows the existing central facility); Tr. at 55:5-56:23 (Peppard Cross).

³⁵ See Oncor/AEP Ex. 10A; *see also* Plains Initial Br. at 9-10.

get produced oil and gas to the market where it can be used.”³⁶ The Application and intervenor testimonies (and other portions of the questionnaire response discussed by Staff), show the community values economic development from oil and gas which are important community resources, and values avoiding impacts to facilities like Plains’ pipelines.³⁷ As Concho’s witness testified, additional transmission in this oil and gas rich area of Texas will “help develop a valuable resource,” but “[i]t makes little sense to increase transmission capacity if the construction of the transmission project negatively affects the purpose for which the Commission is approving [it].”³⁸

When the entirety of the record evidence is considered as a whole, it shows the B2-B3 departure (utilized in Route 320 and Route 325) is far superior at moderating impacts to the affected community and landowners—and costs \$1.6 million less than the competing B1-C3 departure.

II. CONCLUSION

For the foregoing reasons and those in Plains’ Initial Brief, Plains respectfully requests that the Administrative Law Judges recommend approval of one of the supported routes that utilizes links B2-B3, either Route 320 or Route 325 (with or without modification as proposed by Concho and Oxy), and that the Commission adopt that recommendation.

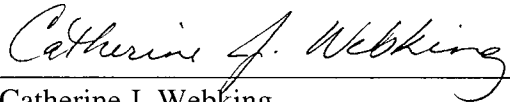
³⁶ Plains Pipeline Ex. 1 at 6 (Midgley Direct).

³⁷ See **Section I (B)**, *supra*.

³⁸ See Concho Ex. 1 at 6 (Burkes Direct).

Respectfully submitted,

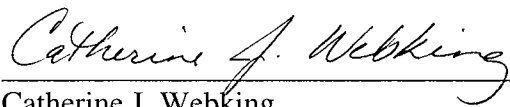
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served in accordance with the governing procedural orders to all parties of record in this proceeding on March 12, 2019.


Catherine J. Webking